

FILED

OCT 18 2005

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RAFAEL VALDIVIA-VALDEZ, a/k/a
Rafael Valdivia,

Defendant - Appellant.

No. 04-10075

D.C. No. CR-03-00794-FRZ

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
Frank R. Zapata, District Judge, Presiding

Submitted October 11, 2005^{**}

Before: T.G. NELSON, WARDLAW and TALLMAN, Circuit Judges.

Rafael Valdivia-Valdez appeals his bench-trial conviction and sentence for illegal re-entry after deportation, in violation of 8 U.S.C. §1326(a) and (b)(2).

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), counsel for Valdivia-Valdez has filed a brief and a motion to withdraw as counsel of record, stating there are no grounds for relief. No pro se supplemental brief has been filed.

We have conducted an independent review of the record pursuant to *Person v. Ohio*, 488 U.S. 75, 83 (1988). We affirm the conviction. We remand the sentence for further proceedings consistent with *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). See *United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005).

Counsel's motion to withdraw as counsel on appeal is denied.

The conviction is **AFFIRMED** and the sentence is **REMANDED**.